

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

SESSION LAW 2011-276
HOUSE BILL 242

AN ACT TO (1) INCREASE THE AMOUNT OF THE BOND REQUIRED UPON REGISTRATION IN ORDER TO DRILL FOR OIL OR NATURAL GAS IN THE STATE; (2) INCREASE THE AMOUNT OF FEES APPLICABLE TO DRILLING AND ABANDONING OIL OR GAS WELLS; (3) ESTABLISH PROVISIONS FOR THE PROTECTION OF LANDOWNERS RELATIVE TO LEASES FOR OIL AND GAS EXPLORATION; (4) DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO STUDY THE ISSUE OF OIL AND GAS EXPLORATION IN THE STATE, AND SPECIFICALLY THE USE OF DIRECTIONAL AND HORIZONTAL DRILLING AND HYDRAULIC FRACTURING FOR THAT PURPOSE; AND (5) DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO CONDUCT AT LEAST TWO PUBLIC HEARINGS ON THE ISSUE IN THE AREA IN WHICH EXPLORATION FOR NATURAL GAS BY MEANS OF DIRECTIONAL AND HORIZONTAL DRILLING AND HYDRAULIC FRACTURING MAY OCCUR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-378 reads as rewritten:

"§ 113-378. Persons drilling for oil or gas to register and furnish bond.

Any person, firm or corporation before making any drilling exploration in this State for oil or natural gas shall register with the Department of Environment and Natural Resources or such other State agency as may hereafter be established to control the conservation of oil or gas in this State. Resources. To provide for such registration, the drilling operator must furnish the name and address of such person, firm or corporation, and the location of the proposed drilling operations, and file with the aforesaid Department a bond in the an amount totaling the sum of (i) five thousand dollars (\$5,000) plus (ii) one dollar (\$1.00) per linear foot proposed to be drilled for the well. (\$5,000) running to the State of North Carolina, conditioned that any Any well opened by the drilling operator upon abandonment shall be plugged upon abandonment in accordance with the rules of said the Department."

SECTION 2. G.S. 113-395 reads as rewritten:

"§ 113-395. Notice and payment of fee to Department before drilling or abandoning well; plugging abandoned well.

Before any well, in search of oil or gas, shall be drilled, the person desiring to drill the same shall notify the Department upon such form as it may prescribe and shall pay a fee of fifty-three thousand dollars (\$50,000)(\$3,000) for each well. The drilling of any well is hereby prohibited until such notice is given and such fee has been paid and permit granted.

Each abandoned well and each dry hole promptly shall be plugged promptly in the manner and within the time required by rules to be prescribed by the Department, and the owner of such well shall give notice, upon such form as the Department may prescribe, of the abandonment of each dry hole and of the owner's intention to abandon, and shall pay a fee of fifteen-four hundred fifty dollars (\$15,000)(\$450.00). No well shall be abandoned until such notice has been given and such fee has been paid."



SECTION 3.(a) G.S. 113-389 reads as rewritten:

"§ 113-389. Definitions.

Unless the context otherwise requires, the words defined in this section shall have the following meaning when found in this law:

...
(7a) "Oil and gas developer or operator" or "developer or operator" shall mean a person who acquires a lease for the purpose of conducting exploration for or extracting oil or gas.

(7b) "Oil and gas operations" or "activities" shall mean the exploration for or drilling of an oil and gas well that requires entry upon surface estate and the production operations directly related to the exploration or drilling.

...
(15) "Surface owner" means the person who holds record title to or has a purchaser's interest in the surface of real property.

...."

SECTION 3.(b) Article 27 of Chapter 113 of the General Statutes is amended by adding a new Part to read:

"Part 3. Landowner Protection.

"§ 113-420. Notice and entry to property.

(a) If an oil and gas developer or operator is not the surface owner of the property on which oil and gas operations are to occur, before entering the property for oil and gas operations that do not disturb the surface, including inspections, staking, surveys, measurements, and general evaluation of proposed routes and sites for oil and gas drilling operations, the developer or operator shall give written notice to the surface owner at least seven days before the desired date of entry to the property. Notice shall be given by certified mail, return receipt requested. The requirements of this subsection may not be waived by agreement of the parties. The notice, at a minimum, shall include all of the following:

- (1) The identity of person(s) requesting entry upon the property.
- (2) The purpose for entry on the property.
- (3) The dates, times, and location on which entry to the property will occur, including the estimated number of entries.

(b) If an oil and gas developer or operator is not the surface owner of the property on which oil and gas operations are to occur, before entering the property for oil and gas operations that disturb the surface, the developer or operator shall give written notice to the surface owner at least 14 days before the desired date of entry to the property. Notice shall be given by certified mail, return receipt requested. The notice, at a minimum, shall include all of the following:

- (1) A description of the exploration or development plan, including, but not limited to (i) the proposed locations of any roads, drill pads, pipeline routes, and other alterations to the surface estate and (ii) the proposed date on or after which the proposed alterations will begin.
- (2) An offer of the oil and gas developer or operator to consult with the surface owner to review and discuss the location of the proposed alterations.
- (3) The name, address, telephone number, and title of a contact person employed by or representing the oil or gas developer or operator who the surface owner may contact following the receipt of notice concerning the location of the proposed alterations.

(c) If the oil and gas developer or operator fails to give notice as provided in this section, the surface owner may seek appropriate relief in the superior court for the county in which the oil or gas well is located and may receive actual damages.

"§ 113-421. Compensation for damages.

(a) The oil and gas developer or operator shall be obligated to pay the surface owner compensation for all of the following:

- (1) Any damage to a water supply in use prior to the commencement of the activities of the developer or operator which is due to those activities.
- (2) The cost of repair of personal property of the surface owner, which personal property is damaged due to activities of the developer or operator, up to the value of replacement by personal property of like age, wear, and quality.

(b) When compensation is required, the surface owner shall have the option of accepting a one-time payment or annual payments for a period of time not less than 10 years.

(c) The surface owner has the right to seek damages pursuant to this section in the superior court for the county in which the oil or gas well is located. The superior court for the county in which the oil or gas well is located has jurisdiction over all proceedings brought pursuant to this section. If the surface owner or the surface owner's assignee is the prevailing party in an action to recover unpaid royalties, the court shall award any court costs and reasonable attorneys' fees to the surface owner or the surface owner's assignee.

(d) Conditions precedent, notice provisions, or arbitration clauses included in lease documents that have the effect of limiting access to the superior court in the county in which the oil or gas well is located are void and unenforceable.

"§ 113-422. Indemnification.

An oil or gas developer or operator shall indemnify a surface owner for damage to property that is adjacent to property on which drilling occurs, as well as adjacent infrastructure, and wells.

"§ 113-423. Maximum lease terms.

Any lease of oil or gas rights or any other conveyance of any kind separating rights to oil or gas from the freehold estate of surface property shall expire at the end of 10 years from the date the lease is executed, unless, at the end of the 10-year period, oil or gas is being produced for commercial purposes from the land to which the lease applies. If, at any time after the 10-year period, commercial production of oil or gas is terminated for a period of six months or more, all rights to the oil or gas shall revert to the surface owner of the property to which the lease pertains. No assignment or agreement to waive the provisions of this subsection shall be valid or enforceable. As used in this subsection, the term "production" includes the actual production of oil or gas by a lessee, or when activities are being conducted by the lessee for injection, withdrawal, storage, or disposal of water, gas, or other fluids, or when rentals or royalties are being paid by the lessee.

"§ 113-424. Applicability; effect.

This Part applies to leases or contracts, and amendments to leases or contracts, entered into on or after June 15, 2011."

SECTION 4. The Department of Environment and Natural Resources, the Department of Commerce as specifically directed by subdivision (5) of this section, and the Consumer Protection Division of the Department of Justice as specifically directed by subdivision (8) of this section shall study the issue of oil and gas exploration in the State and the use of directional and horizontal drilling and hydraulic fracturing for that purpose. The Department of Environment and Natural Resources, in conjunction with the Department of Commerce and the Consumer Protection Division of the Department of Justice, shall report their findings and recommendations, including specific legislative proposals, to the Environmental Review Commission no later than May 1, 2012. At a minimum, the study shall include information on the following:

- (1) Oil and gas resources present in the Triassic Basins and in any other areas of the State.
- (2) Methods of exploration and extraction of oil and gas, including directional and horizontal drilling and hydraulic fracturing.

- (3) Potential impacts on infrastructure, including roads, pipelines, and water and wastewater services. In analyzing potential impacts, the Department shall specifically examine the expected water usage from hydraulic fracturing, water resources in the area in which drilling may occur, as well as existing water users in the area that may be impacted by increased consumption of water for use in hydraulic fracturing.
- (4) Potential environmental impacts, including constituents or contaminants that may be present in the fluid used in the hydraulic fracturing process; the potential for the contamination of nearby wells and groundwater, as well as the options for disposal and reuse of the wastewater produced; stormwater management; the potential for emission of toxic air pollutants; impacts on wildlife; management and reclamation of drilling sites, including orphaned sites; management of naturally occurring radioactive materials (NORM) generated by the drilling and production of natural gas; and the potential for seismic activity in the area in which drilling may occur. In examining this issue, the Department shall formulate regulatory requirements advisable to address potential environmental impacts and in doing so shall gather information on regulatory programs in other states where oil and gas exploration or extraction is occurring, particularly with regard to the use of hydraulic fracturing for that purpose.
- (5) Potential economic impacts, including possible sources of revenue that could accrue to the benefit of the State in the event that drilling for oil or natural gas were to take place in the State. In examining this issue, the Department of Commerce, in consultation with the Department of Environment and Natural Resources, shall gather information on (i) the number of jobs that may be expected as a result from drilling activities in the State and (ii) what severance taxes, fees, royalties, bonds, or assessments may be appropriate in connection with the activity. For any sources of revenue that may be anticipated, the Department of Commerce, in consultation with the Department of Environment and Natural Resources, shall evaluate use of the revenue for the following purposes: funds necessary to implement an oil and gas regulatory program; funds dedicated to the conservation and preservation of land and water resources; funds dedicated to remediation of environmental contamination such as the Inactive Hazardous Sites Cleanup Fund; and funds dedicated to improving water and wastewater infrastructure across the State.
- (6) Potential social impacts, including impacts of drilling operations on nearby communities and quality of life within those communities, recreational activities, and commercial and residential development.
- (7) Potential oversight and administrative issues associated with an oil and gas regulatory program, including statutory authority necessary for implementation of such a program; funding requirements necessary to implement a stable and effective program; criteria for permit issuance or denial; frequency and scope of inspections; compliance and enforcement procedures; coordination of agency involvement to ensure efficient permitting and clear delineation of compliance responsibilities; opportunities for public participation; and data management.
- (8) Consumer protection and legal issues relevant to oil and gas exploration in the State, including matters of contract and property law, mineral leases, and landowner rights. In examining these issues, the Consumer Protection Division of the Department of Justice, in consultation with the Department

of Environment and Natural Resources, shall specifically examine appropriate provisions on recommended disclosures to landowners, compensation for damages, payment of royalties, and remedies for breach, and any other matters the Division deems relevant. The Division shall also study such issues in consultation with the Rural Advancement Foundation International (RAFI).

- (9) Any other pertinent issues that the Department deems relevant to oil and gas exploration in the State and the use of hydraulic fracturing for that purpose.

SECTION 5. By February 1, 2012, the Department of Environment and Natural Resources shall hold at least two public hearings at separate locations within the Triassic Basin on the issue of drilling for natural gas by means of directional and horizontal drilling and hydraulic fracturing. The public hearings shall be conducted in order to promote awareness of the issue generally and inform and consult with the public and user groups on potential environmental impacts, potential regulatory controls, potential economic impacts, and consumer protection issues, including landowner rights and mineral leases. In developing the consumer protection portion of the public hearings, the Department shall consult with the Consumer Protection Division of the North Carolina Department of Justice and the Rural Advancement Foundation International (RAFI).

SECTION 6. In order to avoid redundancy and to make the most efficient use of State resources, the Department of Environment and Natural Resources and the Energy Jobs Council shall, to the maximum extent practicable, conduct the study required by Section 4 of this act in conjunction with the study required by Section 3(a) of Senate Bill 709, 2011 Regular Session, if Senate Bill 709 becomes law. The result of these consolidated studies, if applicable, shall result in one final report from the Department.

SECTION 7. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 17th day of June,
2011.

s/ Walter H. Dalton
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 5:16 p.m. this 23rd day of June, 2011